

[Waiver 1996-2]

January 25, 1996

TO: Bruce Romer
Chief Administrative Officer

Marta B. Perez, Director
Department of Human Resources

FROM: Laurie Horvitz, Chair [initialed]
Montgomery County Ethics Commission

RE: Request for Waiver—Appointment of Collective Bargaining Consultant

You have requested a waiver of Section 411 of the Montgomery County Charter to permit the appointment of Robert Ames, Esquire, of Venable, Baetjer & Howard. Mr. Ames has been selected to provide professional services in connection with collective bargaining negotiations with the Fraternal Order of Police (FOP). In your written submission and your presentation to the Ethics Commission, you have provided the following information.

The County is in the process of renegotiating a labor agreement with the FOP. In the past, the County has utilized employees of the Department of Human Resources (DHR) to handle such negotiations. Due to the County's recent reorganization and reduction in personnel, you determined that an outside consultant should be retained to help frame and present the County's bargaining position. An experienced consultant was deemed necessary due to the significant financial risks associated with the contract. The County, therefore, issued a request for proposals (RFP) to hire a consultant and reviewed proposals from four major law firms. Upon review of the applicants, the County selected Mr. Ames, due to his expertise and his competitive fee. Mr. Ames has special expertise in collective bargaining for the public sector. He is also familiar with police department issues.

Because Mr. Ames practices law with the firm of Venable, Baetjer & Howard, a waiver of Section 411 of the Charter is necessary to permit this consulting relationship.

Section 411 of the Montgomery County Charter provides in part:

No person whose compensation is paid in whole or part by the County shall (1) act as an attorney, agent, broker, or employee for, or receive compensation or anything of value from any person, firm or corporation transacting business of any kind with, or engaging in litigation against the County, or . . . (2) represent or serve any client in any manner if that client's interest is adverse to that of the County, or in conflict with the person's official duties.

Venable, Baetjer & Howard provides legal representation to several clients with interests that are adverse to the County. The law firm has provided a list of all cases in which the provisions of Section 411 may be implicated. That list was provided by Roger Titus, Esquire, approximately one year ago in connection with another waiver request. The Commission granted a waiver to permit Venable, Baetjer & Howard's representation in these matters. The information on the list of Section 411 matters has been updated as part of Mr. Ames' request. Venable, Baetjer & Howard has verified that the list includes all relevant cases that are being handled by the D.C. office (where Mr. Ames works).

Waivers of Section 411 are governed by Section 19A-8(a) of the Montgomery County Ethics Law. That Section of the Ethics Law provides:

After receiving a written request, the Commission may grant . . . a waiver of . . . Section 411 of the Charter . . . if it finds that:

- (1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.

The Commission finds that the waiver criteria have been met and the requested waiver may be granted.

First, the Commission finds that the hiring of Mr. Ames serves the best interests of the County. He is uniquely qualified to provide the consulting services. In your presentation to the Commission, you explained that none of the other applicants had Mr. Ames' unique combination of qualifications. In particular, you emphasized his experience with both police negotiations and public sector labor contracts.

In addition, the importance of Mr. Ames performing his duties under this County contract outweighs the actual or potential harm of any conflict of interest. Mr. Ames has not disclosed any matters that he is personally involved in that raise Section 411 issues. None of the cases identified by Mr. Titus involve the representation of police unions, nor do they involve the representation of unions that are negotiating with the County. Instead, the listed cases involve matters that are not related to the duties that Mr. Ames will be performing for the County. In fact, most of the cases are not being handled by the D.C. office of Venable, Baetjer & Howard. Finally, Mr. Ames will be providing consulting services, not legal services. In light of these facts, the actual or potential harm is outweighed by the importance to the County of obtaining Mr. Ames' services. Finally, granting the waiver will not provide Mr. Ames with an unfair advantage over other members of the public. An RFP was issued and several law firms responded. DHR reviewed these responses and negotiated with several of the firms. Mr. Ames was selected after this competitive procurement process. In light of these facts, he will not receive any unfair advantage.

Based upon the foregoing, the Commission hereby grants the requested waiver. If the facts should change, please provide the additional information to the Commission. Venable, Baetjer & Howard must immediately report any new cases involving potential violations of Section 411. If you have any questions concerning this decision, please do not hesitate to contact the Commission.